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| 09/848,108      | 05/02/2001  | Carl Ludewig         | 04088P006           | 7622             |

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EXAMINER

HARRELL, ROBERT B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2142

DATE MAILED: 08/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/848,108

**Applicant(s)**

LUDEWIG, CARL

**Examiner**

Robert B. Harrell

**Art Unit**

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

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1. Claims 1-26 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The claims are more directed to: TIMING TRANSMISSION OF A COMPRESSED TEST FILE TO DETERMINE LINK BIT RATE AND TIMING DECOMPRESSION RATE OF THE TEST FILE TO SELECT A CLIENT MINIMUM BUFFER SIZE.
3. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, and clarity of meaning in the Specification, Drawings, and specifically claims.
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-26 are rejected under 35 U.S.C. 102 (b) as being anticipated by Miller et al. (5,727,002).

6. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature as the whole of the reference is cited and relied upon in this action.

7. Per claim 1, Miller taught, a computer-implemented method (e.g., see Title and Abstract (lines 1-2)) comprising:
  - a) transmitting a test file (e.g., see col. 18 (line 8 ("test file"))) to a client (e.g., see col. 18 (line 10 "Client"));
  - b) timing said transmission of said test file with a timer (e.g., see col. 18 (line 5 "PING"); ping is a well known method used for determining the combination of processing power and network link speed by calculating the time it takes for a packet of known size to be transmitted from a source to and processed by a destination);
  - c) resetting said timer and reattempting said transmission of said test file if said timer reaches a first maximum threshold value (e.g., see col. 18 (lines 31-36) (one of two well known communication negotiation methods using fall-back/jump-forward speeds (i.e., starting at the highest speed and then constantly falling back one level of speed until communication is established (no more errors), or jumping forward in speed; here Miller elected to start with the lowest level first and jump forward; fallbacks and jump forwards obtain equivalent ends));

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d) and calculating an effective bitrate for delivering data to said client based on transmission time of said test file (e.g., see col. 18 (line 34); "effective bitrate" is not limited to the physical "link speed").

8. Per claims 2, 5, and 6, see col. 18 (lines 14-26 for a lookup table) where the minimum was 64kps; and in fall-back, the second minimum threshold value would be at  $t=n$  ( $t$  is time and  $n$  is attempt).

9. Per claim 3, see col. 14 (line 35). It is also noted that col. 2 (line 32) stated "Internet" and clients were known to be so connected via modems that used data compression and thus the test file would inherently be compressed at least in part by the modem.

10. Per claim 4, see col. 13 (lines 21-22 "files up to 2 gigabytes").

11. Per claims 7 and 10 see col. 17 (lines 59-62)).

12. Per claims 8 and 9, buffers were inherently apart of data transmission (Official Notice taken) and it was inherently required for proper functioning of the system to provide the minimum required buffer size to hold the incoming data at a given link rate with respect to processing of that incoming data (i.e., a 64Kps data rate and 32Kps decompression would inherently require about 192k buffer for 5 seconds of data assuming decompression starts after the first 64K); hence, knowing the decompression rate was critical in order to provide an adequately sized buffer; and the faster the rate, the greater (more maximum) the buffer size.

13. Per claims 11-26, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The "Ping Manual Page" taught the "ping" function in which data test files (datagram) was transmitted from a source who measured the time it took to get a response. From this, an effective bitrate could be ascertained between the source and the destination. (effective Bitrate, as defined in the art, is not link speed; it is a combination of processing power (i.e., decompression time), link speed, and other related delays).

15. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (703) 305-9692. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack B. Harvey, can be reached on (703) 308-9705. The fax phone numbers for the Group are (703) 746-7238 for After-

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Final, (703) 746-7239 for Official Papers, and (703) 746-7240 for Non-Official and Draft papers.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

A handwritten signature in black ink, appearing to read 'Robert B. Harrell', is written over the typed name.

ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142